

DOCUMENT RESUME

ED 239 999

SO 015 319

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TITLE Law of the Sea, Resource Use, and International Understanding.
PUB DATE Oct 83
NOTE 23p.; Paper presented at the National Council for Geographic Education Conference (Ocho Rios, Jamaica, October 23-28, 1983).
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Speeches/Conference Papers (150) -- Guides - Classroom Use - Guides (For Teachers) (052)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Developed Nations; Developing Nations; Economic Development; *Global Approach; Higher Education; Instructional Materials; *International Cooperation; *International Organizations; *International Relations; Natural Resources; *Oceanography; Quality of Life; Resource Materials; Secondary Education; World Affairs; World Problems
IDENTIFIERS *Law of the Sea Convention; Minerals

ABSTRACT

Examined are the mandates of the Law of the Sea (LOS) Convention (not ratified by the United States), which set aside approximately two-thirds of the world's oceans as a "common heritage of mankind" to further the establishment of a "new economic order." The convention established an International Seabed Authority designed to administer and equitably distribute oceanic mineral resources among both the haves and the have-nots. This paper illustrates, through a brief examination of the LOS Convention's precepts, a few significant questions with which educators might confront students concerning the ocean as one of our last frontiers. For example: Can we afford less than a holistic approach in resource use planning? How are we to meet growing demands by Third World states for an improved standard of living? How can we better understand and cope with differing political-economic views on the right of access to and equity in the benefits of global resources? The first part of the paper discusses the convention's mandates for the use of minerals, living resources, and ocean space. An annotated listing of resources with which to stimulate class discussion concludes the paper. (RM)

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LAW OF THE SEA, RESOURCE USE, AND INTERNATIONAL UNDERSTANDING

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Ocho Rios, Jamaica
October 23-28, 1983

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LAW OF THE SEA, RESOURCE USE, AND INTERNATIONAL UNDERSTANDING

On December 10, 1982, at Montego Bay, Jamaica, 117 states, the Cook Islands (a self-governing associated state) and the United Nations Council for Namibia signed the United Nations Convention on the Law of the Sea (LOS). The United States did not sign the Convention. Despite the United States' failure to become a signatory, the Convention represents the most important initiative of international consensus since the establishment of the United Nations shortly after World War II. One year after ratification of the Convention by 60 states' national legislative bodies, it will come into force; the ratification process may be completed by the late 1980's.

The LOS Convention, a product of more than a decade of negotiations by more than 150 states, establishes new concepts in resource ownership and management. Indeed, the Convention has a vital significance for all national governments, for large industrial corporations, for small businesses, for economic, legal, social, and educational institutions, and for all of us as world citizens. The purpose of this paper is to illustrate, through a brief examination of the LOS Convention's precepts, a few significant questions with which educators might confront students. For example:

- 1) How should we treat the oceans as one of our last resource frontiers?
- 2) Can we afford less than a holistic approach in resource use planning?
- 3) How are we to meet growing demands by Third World states for an improved standard of living? and 4) How can we better understand and cope with differing political-economic views on the right of access to and equity in the benefits of global resources? These questions are best examined by looking at the

LOS Convention's mandates (or lack of them) for the use of various resources, including minerals, living organisms, and space.

MINERALS

The basic thrust of the Convention is to set aside a major portion (approximately two-thirds) of the world's oceans as a "common heritage of mankind" and to further the establishment of a "new economic order." To implement these two goals, the Convention has established an International Seabed Authority that is designed to administer and equitably distribute oceanic mineral resources among both the haves and the have nots. Of course, how equity should be achieved and at whose expense are the sensitive issues.

Who will administer these resources and how administrative decisions are to be reached have been major stumbling blocks in the effort to reach consensus among world states. Third World states, referred to in the parlance of the LOS negotiations as the Group of 77 (now some 120), desired a loosely structured administrative body, one with few specific rules initially but which would evolve these through time. Developed states, the United States for example, wanted the rules spelled out from the start. Through compromise, a tightly organized Authority structure gradually evolved, including a Secretariat, an Assembly, a Council, an Enterprise, and an autonomous Tribunal (Figure 1).

The Secretariat functions to provide a smooth and technically efficient operation of the Authority, and the Tribunal arbitrates and settles disputes among Parties to the Convention. The Assembly, the fulcrum of the Authority's power, is the final arbiter of policy decisions. Elected by the Assembly, the Council acts as the Authority's executive

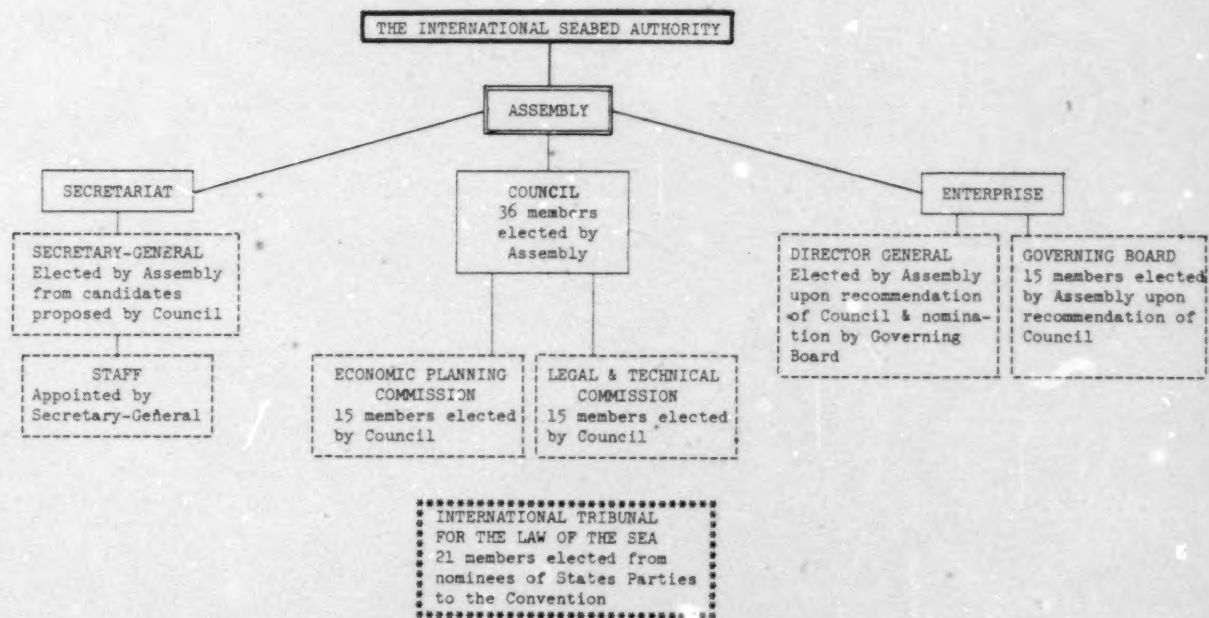


Figure 1. Organizational structure of the International Seabed Authority.

Source: Third United Nations Conference on the Law of the Sea. United Nations Convention on the Law of the Sea, October 7, 1982: Draft Final Act of the Third United Nations Conference on the Law of the Sea, October 21, 1982. U.N. Doc. A/Conf. 62/122. New York, N.Y.: UN, pp. 64-79, 83, 173.

body and has the power to establish and administer policies and to make recommendations to the Assembly for personnel appointments within the Authority. Early on, the developed states argued for weighted voting, based on a state's relative investment in seabed mining research and development. The Group of 77 has insisted on a one state-one vote concept, the procedure now embodied in the Convention. A similar dichotomy of views emerged regarding what should constitute a voting majority. Developed states opted for a three-fourths rule and the Group of 77 for a two-thirds rule. A recent compromise on this issue requires only a two-thirds majority on substantive matters but a three-fourths majority for all future amendments to the Convention.

Perhaps, the most controversial component of the Authority is the Enterprise, the Authority's operating arm. The jurisdiction of the Enterprise encompasses only those oceanic regions contained within what is termed the "Area," i.e., waters lying seaward of a 200-nautical miles Exclusive Economic Zone (EEZ) which is measured from a state's territorial sea baseline (Figure 2). The Enterprise will screen and license applicants seeking to mine the seabed and will monitor their activities once mining has begun. It may also designate specific Third World states to mine individually or jointly with the Enterprise, cancel mining rights, and set production quotas on cobalt, nickel, copper, and manganese, all minerals with strategic significance which are contained in manganese nodules that cover large areas of the deep seabed (Figures 3 and 4).

Some developed states, even those that have signed the Convention, feel that these and other mandates give the Authority an exceptionally

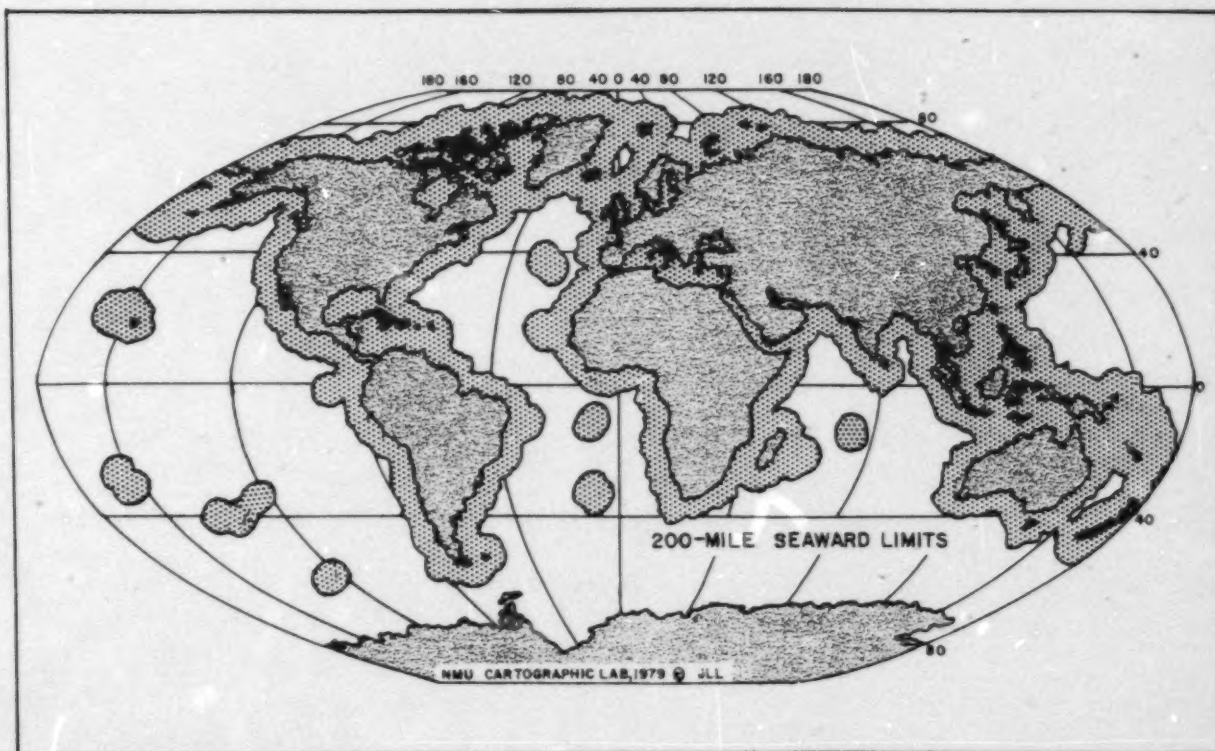


Figure 2. Two hundred-mile seaward limits of the Exclusive Economic Zone.
Source: Author.

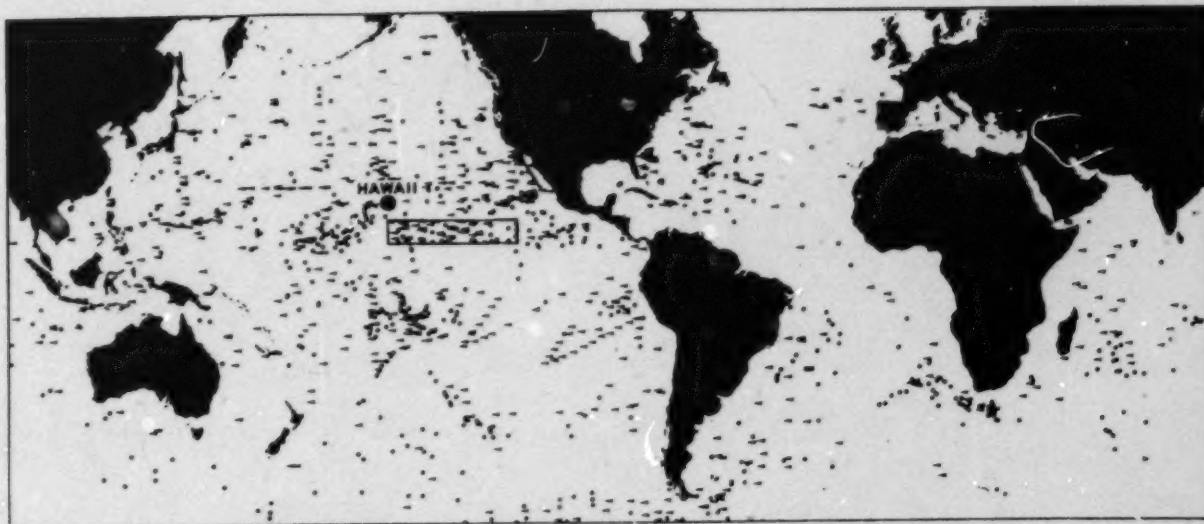


Figure 3. World distribution of manganese nodules as determined from dredge (arrows) and core (dots) samples; based on the quantity and metal content of the nodules, the region southeast of the Hawaiian Islands holds the best prospects for the first mine sites.

Source: Horn, D.R. et al. 1973. Distribution of Ferromanganese Nodules and Proposed Research Vessel's Track North Pacific. Technical Report No. 8, NSF GX 33616. Washington, D.C.: National Science Foundation, p. 2.

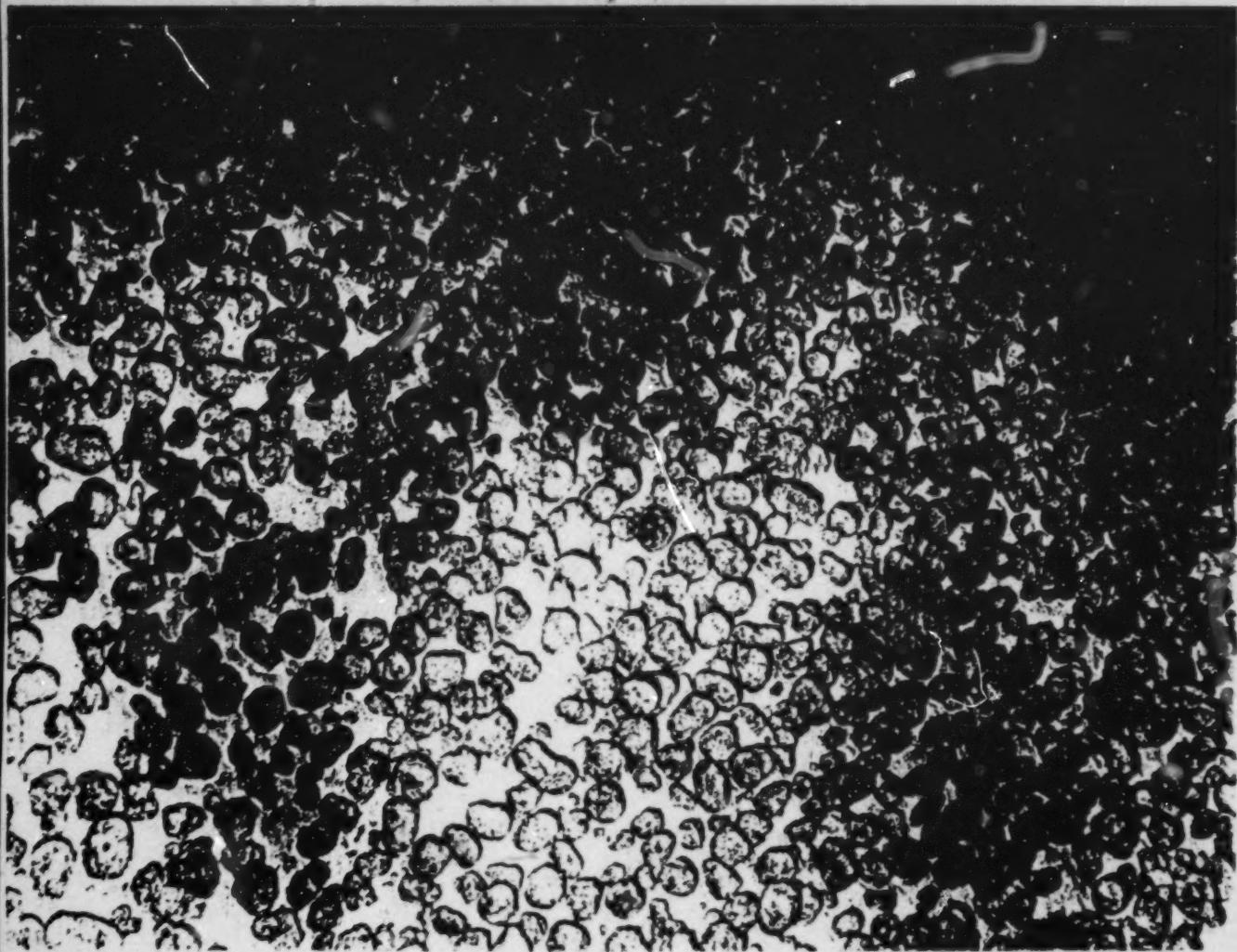


Figure 4. Manganese nodules lying on the seabed. Deposits occur in greatest abundance at 4,000 to 6,000 meters.

Source: Woods Hole Oceanographic Institution.

large amount of power, even to the point of making it an international monopoly with which competition by free enterprise will be nearly impossible. Of course, all mineral production within the EEZ remains under the control of a coastal state. Given that most hydrocarbons occur well within the 200-mile EEZ of coastal states, the Third World will receive little income from petroleum resources on the outer continental slope, the rise and the deep seabed (Figure 5).

As now structured, the Convention neither guarantees the United States a seat on the Council nor stipulates that any United States mining consortia will be granted a mining claim in the deep seabed, even though it has provided a major share of the technical expertise and research investment in seabed mining. The Convention does require, however, that in certain situations this technology must be made available for purchase by the Enterprise at a "fair-market" price. Many in the United States contend that the lack of a guaranteed seat on the Council and the potential for forced technology transfers are so inequitable as to justify the Reagan Administration's rejection of the Convention.

LIVING RESOURCES

The preamble to the Convention on the Law of the Sea notes that "the problems of ocean space are closely interrelated and need to be considered as a whole." For example, Iceland, without a domestic source of limestone, exploits calcareous shells that have collected on the seabed of Faxa Floi (Figure 6). Dredges fitted with siphons extract the shells, creating persistent plumes of suspended sediments that may have negative impacts on local fisheries but which may also supply tiny

WORLDWIDE OFFSHORE DISTRIBUTION OF POTENTIAL RECOVERABLE PETROLEUM RESERVES

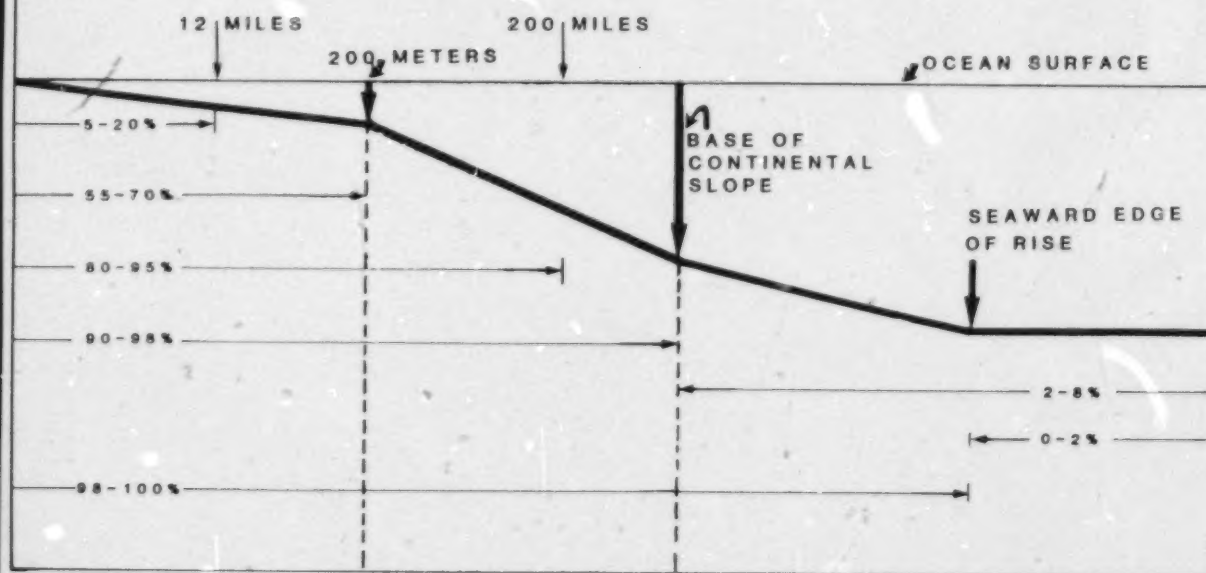


Figure 5. Distribution of potential recoverable offshore petroleum reserves.
Source: After Carmichael, J. 1975. "Companies Cooperate in Program to Develop Continental Shelf." Offshore 35 (6):31.

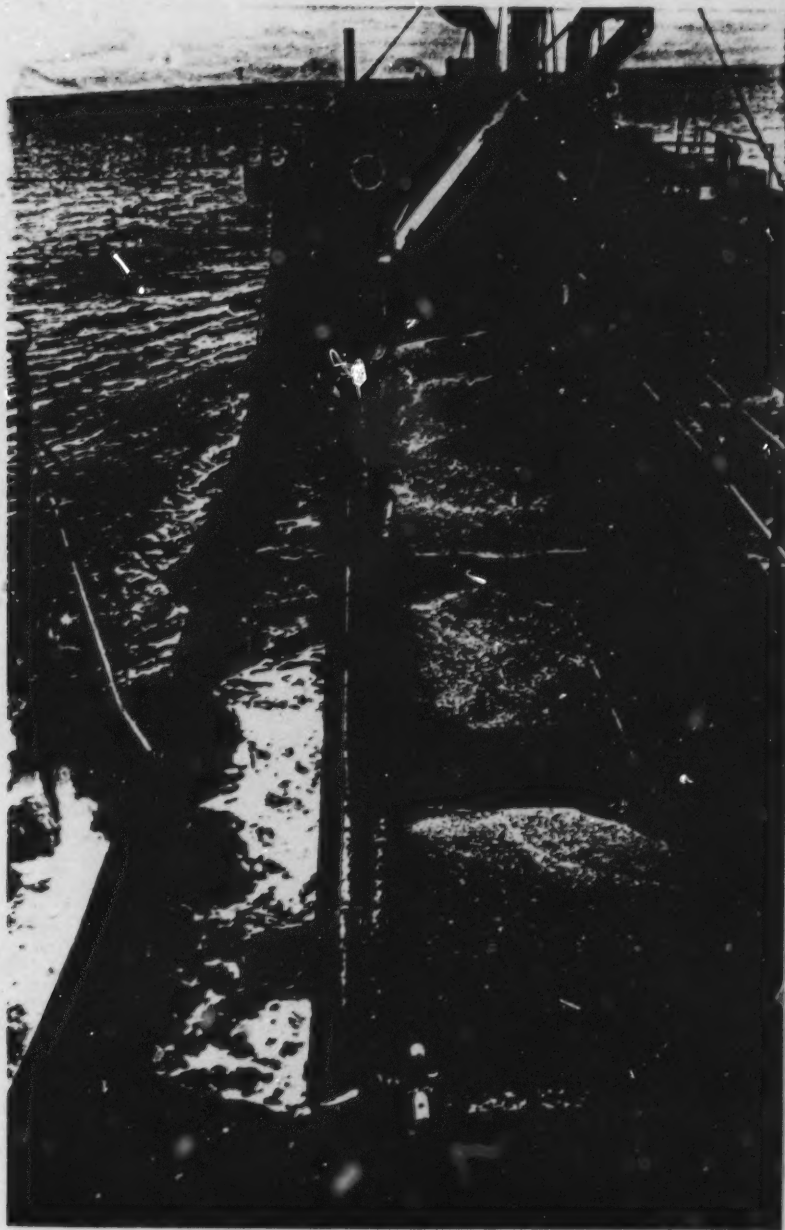


Figure 6. Loaded shell dredge on the Faxa Floi, Iceland.

Source: Author.

crustaceans needed by fish as food. Or, as in the North Sea where petroleum pipelines and communications cables crisscross the seabed, trawling fleets may snag and lose their nets. Under the Convention, states have the right to exploit living oceanic resources, both within their EEZ and in the "Area," if the process does not negatively affect other uses.

Although this is a noble ideal, the reality is that many world states do not have the scientific and technical capability of implementing and monitoring living resource use programs. Furthermore, as noted previously, the International Seabed Authority's competence is limited only to the exploration and exploitation of mineral resources of the "Area" and not the EEZ. Yet, it is within the nationally controlled EEZ's that most living resource exploitation occurs. Indeed, the Convention fails to assure landlocked states access to the living resources of the sea within the EEZ of individual states. It merely calls upon the coastal states to make available to other states those living resources not fully utilized, a rather nebulous responsibility.

Fragmented jurisdictions among coastal states and the lack of a legal basis for fisheries regulation by the International Seabed Authority, as well as the mobility of most marine fishes and mammals, will not enhance living resource management under the new régime. In sum, as in the case of onland resources, effective marine resource management will be constrained by multiple jurisdictions, inadequate research programs, poor monitoring, and varying national objectives.

OCEAN SPACE

Perhaps the most important resource of the ocean is its space--i.e., space

to absorb, to transport, and to conceal. Ocean space has long been a prime area for dumping unwanted wastes. Most oceanographers and marine ecologists feel that the ocean is highly fragile and has limits to its ability to absorb our cultural debris. Although the Convention sets down numerous stipulations against dumping wastes in the oceans, whether the source of the wastes is onland or marine vessels, some observers note that the Convention is disturbingly quiet on the subject of nuclear wastes. Furthermore, to date, no real international program has been established for monitoring adherence to the dumping strictures stated by the Convention. To expect individual states and other users to always fulfill their obligations to maintain the marine environment is to overlook the realities of the ubiquitous "free-rider" problem which is especially severe in the case of the oceans, given their currents.

Under the Convention, the long-standing right of innocent passage by foreign ships and aircraft through straits continues. Some observers are not sure that this protection extends to submerged craft such as submarines. Future problems may arise if coastal states implement their Convention-stipulated rights to establish highly restrictive pollution controls on transport vessels or to refuse research vessels permission to gather data in their territorial waters or EEZ. Furthermore, if a state perceives the passage of a military vessel or aircraft as prejudicial to its welfare, it can deny passage through or over its waters. There is more than a bit of irony here. Both the United States and the Soviet Union were motivated in their original call in the early 1970's for a Third United Nations Conference on the Law of the Sea by the hope that trends toward more restricted interpretations of "freedom of the seas" might be arrested.

CONCLUSIONS

Although the United Nations Convention on the Law of the Sea is not a perfect document, much has been accomplished. Selected world states are now working within a Preparatory Commission to iron out remaining problems and to establish basic rules for daily operation of the Authority's components. By not signing the Convention, the United States abrogated its right to active participation in the Preparatory Commission, and it has refused even to observe the proceedings. The United States' position may change under future political leadership, but the perceived flaws in the Authority's operational procedures are likely to remain, if the United States stays absent from the negotiations. Although the United States may proceed in its efforts to establish a separate "mini-treaty" with like-minded developed states, this gambit is unlikely to succeed. The United States must recognize that Third World states, with the concurrence of most of the developed states, will be an important political and economic force in future oceanic resource utilization. The Convention is not a perfect document, but it has demonstrated that: 1) world states can act through consensus; 2) humankind now views the oceans as an integrated system; and 3) oceanic resources may yet benefit all of Earth's peoples.

SUGGESTED READINGS AND SOURCES

The following bibliographic items can provide an argumentative edge to stimulate class discussion of the merits and shortcomings of the LOS Convention and can illustrate the many problems faced by national governments and resource producers in exploiting the oceans.

Alexander, L.M. 1983. "The Ocean Enclosure Movement: Inventory and Prospect." San Diego Law Review 20:561-94.

Alexander, speaking for himself and not as The Geographer, U.S. Department of State, finds numerous inadequacies in the Convention. Given his long experience in offshore problems, his observations merit careful study. The San Diego Law Review, an especially useful reference for the study of LOS affairs, may be obtained directly from Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, Florida 33510, at \$4.50 per issue.

Blitgen, G.E. 1982. "U.S. Deep Sea Mining at the Crossroads." Mining Congress Journal 67 (2):51-4.

A strong presentation of the mining industry's views on the LOS negotiations and the Convention.

Earney, F.C.F. 1981. "China's Offshore Petroleum Frontiers: Confrontation? Conflict? Cooperation?" Resources Policy 7 (2):118-28.

Provides some notion of the conflicts in progress and that may arise in the future as states attempt to establish claims to territorial seas, despite the world community's acceptance of the LOS Convention.

_____. 1983. "The Law of the Sea and the Future of Ocean Mining." Transition 13 (2):2-12.

Examines in detail the structure of the International Seabed Authority and the reasons for the Reagan Administration's rejection of the Convention.

_____. 1982. "Norway's Offshore Petroleum Industry." Resources Policy 8 (2):133-42.

Demonstrates the importance of national policies in controlling the development of offshore mineral resources.

_____. 1982. Ocean Mining: Geographic Perspectives. Meddelelser fra Geografisk Institutt ved Norges Handelshøyskole og Universitetet i Bergen, Nr. 70. Bergen, Norway, 148 pp.

A broad examination of economic, social, political, and technical problems associated with marine mineral exploitation. May be ordered from the Institutt at Helleveien 30, 5035 Bergen-Sandviken, Norway.

_____. 1975. "Ocean Space and Seabed Mining." The Journal of Geography 74:539-47.

Useful critique of the early Third LOS Conference negotiations.

_____. 1982. Ocean Space, Seabed Mining, and the Third Law of the Sea Conference: A Role Playing Unit. Washington, D.C.: Ocean Education Project, 12 pp.

Contains many ideas relevant to the continued points of view of both the Third World and the Developed states. Available from the OEP, 100 Maryland Ave., N.W. 20002.

_____. 1980. Petroleum and Hard Minerals from the Sea. London:

Edward Arnold, 291 pp.

Examines technical, economic, and political problems associated with continental margin and deep seabed mineral extraction.

Glassner, M.I. 1978. "The Law of the Sea." Focus [The American Geographical Society] 28 (4):1-24.

An excellent overview of the issues at stake during the LOS negotiations.

Glassner has been a participant in many of the LOS sessions, and he has an intimate knowledge of his subject.

Goldberg, E.D. 1981. "The Oceans as Waste Space: The Argument." Oceanus 24 (1):2-9.

Argues that, if used properly, the oceans can serve as a renewable resource for waste disposal.

Kamlet, K.S. 1981. "The Oceans as Waste Space: The Rebuttal." Oceanus 24 (1):10-17.

Kamlet contends not enough is known about the oceans' ability to absorb waste that we can indiscriminately dump all wastes into them.

"Law of the Sea Convention: Signing in Jamaica." 1983. UN Chronicle 20 (2):3-13.

An excellent summary of events at the December 10, 1982, LOS meeting for signing the Convention. Provides a helpful chronology of LOS meetings (1958-1983) and outlines the primary focus and accomplishments at each meeting.

McDonald, A. 1982. "Mines in a Lawless Sea." The Geographical Magazine 54:501-03.

A succinct and readable résumé of the situation immediately prior to the December 10, 1982, signing of the Convention.

Pardo, A. 1983. "The Convention on the Law of the Sea: A Preliminary Appraisal." San Diego Law Review 20:489-503.

Pardo, in 1967, as Malta's ambassador to the United Nations, called for the oceans to be set aside as the "common heritage of mankind." His analysis here focuses upon whether the Convention, as presently structured, meets his request. He concludes that the Convention has many failings, but it has moved the world community far in the desired direction.

Polsgrove, C. 1981. "Second Choice: Nuclear Dumping on the High Seas." Oceans 14 (3):64-8.

A useful presentation that lends itself to student debate.

Ratiner, L.S. 1982. "The Law of the Sea: A Crossroads for American Foreign Policy." Foreign Affairs 60:1006-21.

Ratiner, who for years worked as a State Department consultant and member of the United States' LOS negotiating team, contends that the International Seabed Authority will work without the United States. He is probably the most outspoken critic of the Reagan Administration's LOS policies. This article is very provocative, and it merits a thorough reading.

Richardson, E.L. 1983. "The United States Posture toward the Law of the Sea Convention: Awkward but not Irreparable." San Diego Law Review 20:505-19.

As head of the Carter Administration's delegation to the LOS negotiations, Richardson speaks with authority and conviction. He feels the LOS Convention has much to offer the United States and eventually, its leadership and people will realize that the country must join the world's other states in signing the Convention.

Third United Nations Conference on the Law of the Sea. United Nations Convention on the Law of the Sea: Draft Final Act of the Third United Nations Conference on the Law of the Sea, December 10, 1982.

Teachers may order a copy of this document from: The Office of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, Washington, D.C., or may purchase a copy from the Publications Office, United Nations, UN Building, Room A-3315, New York, N.Y. 10017.

United States Central Intelligence Agency. 1980. The New Global Fishing Regime: Impact and Response, Research Paper GC-80-10029. Washington, D.C., 23 pp.

Reviews the impact of world states' increasing use of 200-mile fishing resource zones. Discusses ways the fishing industry is adjusting to the new régime.

Wertenbaker, W. 1983. "A Reporter at Large (Law of the Sea Conference, Parts I and II)." The New Yorker 59 (Aug. 1 and 8):38 ff. and 56 ff., respectively.

A detailed and revealing critique of the inner workings of the LOS Conferences during the entire period of negotiations. Provides numerous insights about the thinking and strategies of the participants.

Wijkman, P.M. 1982. "UNCLOS and the Redistribution of Ocean Wealth." Journal of World Trade Law 16:27-48.

The author does not believe that the Convention equitably redistributes ocean resource wealth; it merely perpetuates coastal state suzerainty. Consequently, much of the Third World will remain at the mercy of the highly industrialized and capitalized states.

Zuleta, B. 1983. "The Law of the Sea after Montego Bay." San Diego Law Review 20:475-88.

Stresses the point that the Montego Bay signing of the Convention has given all states a clear message--the United Nations can be an effective forum for negotiating difficult and complex issues, and most states, small and large, desire to function under the rule of law.

ACKNOWLEDGMENTS

I am grateful to my Northern Michigan University colleagues Professor John P. Farrell, Mr. Russell A. Ault, and Mr. Donald D. Pavloski for help in preparing figures and to Provost Robert B. Glenn for providing financial assistance.

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